Supreme Court of the United States

OCTOBER TERM, 1939.

No. 567.

HARRY M. VEIX,

Appellant,

vs.

SIXTH WARD BUILDING AND LOAN ASSOCIATION OF NEWARK, NEW JERSEY, a corporation,

Appellee.

APPEAL FROM NEW JERSEY SUPREME COURT.

BRIEF ON BEHALF OF APPELLANT.

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Opinion of the New Jersey Court of Errors and Appeals Where Officially Reported.

This opinion is officially reported as follows:

Title	Official Report
Viex v. *Sixth Ward Building and Loan Association of Newark, New Jersey*	123 N. J. Law 356.

Supreme Court of the United States

OCTOBER TERM, 1939.

No. 567.

HARRY M. VEIX,
Appellant,
vs.
SIXTH WARD BUILDING AND LOAN ASSOCIATION OF NEWARK, NEW JERSEY, a corporation,
Appellee.

On Appeal from New Jersey Supreme Court.

BRIEF ON BEHALF OF APPELLANT.

Statement of the Case.

On October 1, 1928 appellant purchased twenty-five prepaid shares and on October 2, 1928 seventeen and one-half prepaid shares of the appellee Building and Loan Association of a par value of $200.00 each for which the appellant paid the appellee the sum of $8,500.00 (R. 1 and 4), and by the terms of the certificates issued to the appellant therefore, the appellee agreed to pay the appellant six (6) per centum per annum interest on the face value of said shares (R. 10A and 10B).

At the time said shares were purchased as aforesaid the New Jersey Statute, Pamphlet Laws 1925 Chapter 65 provided that shares may be withdrawn at any time by

giving such written notice as the constitution or by-laws of the association provided, not to exceed 30 days and that in no case shall payment be postponed for a period longer than six months from the date of such notice, and any member who has given the said notice may sue for and recover the withdrawal value of his shares in any court of competent jurisdiction if the same is not paid in six months from the date of the giving of said notice of withdrawal (R. 2 and appendix hereto p. 49).

At the time said shares were purchased Article XIX of the Constitution of the appellee Building and Loan Association provided for the withdrawal of prepaid certificates upon giving thirty days written notice (R. 2 and appendix hereto, p. 49).

On August 17, 1932 the appellant gave the appellee Building and Loan Association written notice of withdrawal of said shares, thirty days thereafter, six months thereafter and on many other occasions he demanded payment of the withdrawal value of his shares with interest, but payment with refused (R. 2).

At the time such demands were made the appellee Building and Loan Association was and still is solvent (R. 3 and 5).

Subsequent to the date of appellant's withdrawal notice payments have been made by the appellee upon other withdrawal applications (R. 3 and 5).

The appellee association framed its answer setting up as a defense 1937 Revised Statutes of New Jersey 17:12-53 (R. 5) *source* New Jersey Pamphlet Laws of 1925, Chapter 65, Section 52, page 212; New Jersey Pamphlet Laws of

1932, Chapter 102, Section 1, page 175; approved April 22, 1932, New Jersey Pamphlet Laws of 1935, Chapter 59, Section 11, page 153 and New Jersey Pamphlet Laws of 1936, Chapter 118, Section 4, page 295.

We set forth above the source of 1937 Revised Statutes of New Jersey because the history of that legislation is as follows:

On April 22, 1932 the New Jersey Legislature amended section 52 of the 1925 Act to read as set forth in the appendix to this brief (Appendix, p. 50).

The important distinction between this and the 1925 Act is that the 1932 Act omitted the provision of the 1925 Act which gave the right to a withdrawing shareholder to institute suit and recover the withdrawal value of his shares if the same were not paid within six months from the date of his withdrawal notice, and substituted therefore a withdrawal list from which the withdrawing members were entitled to receive $500.00 in rotation each month, if funds were available for that purpose and if all matured shares were first paid in full. *It also contained a provision that no member should have the right to bring suit against the association so long as the funds of the association were applied as required by this section.*

On March 12, 1935 the New Jersey Legislature again amended Section 52 of the 1925 Act, by Chapter 59 of the Laws of 1935 set forth in the appendix to this brief (Appendix, p. 52). This statute is in different form, but in effect is the same as the 1932 Act except that it authorizes the payment of $50.00 in rotation to each member on the withdrawal list instead of $500.00 and goes into detail regard-

ing the amount of funds which the directors may allocate for the payment of withdrawals and maturities. The 1935 Act also contained the provision that no member should have the right to bring suit against the association so long as the funds of the association were applied as required by that section.

Again the Legislature of New Jersey on May 26, 1936 amended Section 52 of the 1925 Act by Chapter 118 of the Laws of 1936 set forth in the appendix to this brief on page 54 making minor changes to clarify the position of the withdrawing members on the withdrawal list. This statute likewise did away with the right of the shareholder to sue for and recover the withdrawal value of his shares if the same be not paid within six months from the date of withdrawal notice, and specifically provided that no member should have the right to bring suit so long as the funds of the association should be applied as required by that section. The 1937 Revision was enacted on December 20, 1937, and became effective Dec. 2, 1937 (R. S. 1:2-3). In the 1937 Revision, Section 52 of the 1925 Act as amended, by Chapter 118 of the Laws of 1936 was carried verbatim (except for three very minor changes in paragraph "f" thereof) as title 17: Chapter 12, paragraph 53. This is set forth in full in the appendix to this brief (Appendix, p. 57).

The appellant moved to strike the answer on the ground that it failed to set up a defense and based its argument on the contention that 1937 Revised Statutes of New Jersey 17:12-53 and its sources, is in violation of Article 1, Section 10 of the Federal Constitution and Section 1 of the Fourteenth Amendment of the Federal Constitution.

The appellee urged that the said Act is constitutional, and the trial court upheld that contention and struck the complaint. The New Jersey Court of Errors and Appeals upheld the decision of the trial court and held 17:12-53 of the 1937 Revision to be constitutional under the authority of *Busci* vs. *Longworth Building and Loan Association*, 119 N. J. Law 120 and *Rocker* vs. *Cardinal Building & Loan Association*, 119 *id.* 134. The *Busci* case concedes that there is an impairment of the shareholder's contract by the 1932 amendment, which was in force when that case was decided, but justifies that enactment as being a reasonable exercise of the police power of the State.

The *Busci* opinion in the New Jersey Court of Errors and Appeals, *supra*, at page 122 sums up their argument thus:

> "It must be noted that this statute does not, by its terms, limit its operation to the period of an existing emergency and this reason takes it out of the class of mere emergency legislation—so-called. But it is unnecessary to sustain the statute on the temporary ground that it is an emergency statute, because it is sustainable on broad constitutional grounds, as a valid exercise of the reserved power of the State. This so-called reserved power is generally referred to as the police power of the State and extends to all great public needs."

Specifications of Assigned Errors Intended to Be Urged.

Appellant, at the hearing of this cause, will urge the following assigned errors, being assignments numbered 1 to 7 inclusive (R. 16, 17, 18).

1. The New Jersey Court of Errors and Appeals erred in failing to hold that 1937 Revised Statutes of New Jersey 17:12-53 –*source* New Jersey Pamphlet Laws of 1925 Chapter 65 Section 52, page 212; New Jersey Pamphlet Laws of 1932 Chapter 102 Section 1, page 175, approved April 22, 1932; New Jersey Pamphlet Laws of 1935 Chapter 59 Section 11, page 153 and New Jersey Pamphlet Laws of 1936 Chapter 118 Section 4, page 295 impaired the obligation of an existing contract between the appellant and the appellee in violation of Article 1, Section 10 of the Constitution of the United States.

2. The New Jersey Court of Errors and Appeals erred in failing to hold that said 1937 Revised Statutes of New Jersey 17:12-53 *source* New Jersey Pamphlet Laws of 1925 Chapter 65 Section 52, page 212; New Jersey Pamphlet Laws of 1932 Chapter 102 Section 1, page 175, approved April 22, 1932; New Jersey Pamphlet Laws of 1935 Chapter 59 Section 11, page 153 and New Jersey Pamphlet Laws of 1936 Chapter 118 Section 4, page 295 deprived the appellant of his property without due process of law in violation of Section 1 of the 14th Amendment to the Constitution of the United States.

3. The New Jersey Court of Errors and Appeals erred in failing to hold that said 1937 Revised Statutes 17:12-53 *source* New Jersey Pamphlet Laws of 1925 Chapter 65 Section 52, page 212; New Jersey Pamphlet Laws of 1932 Chapter 102 Section 1, page 175, approved April 22, 1932; New Jersey Pamphlet Laws of 1935 Chapter 59 Section 11, page 153 and New Jersey Pamphlet Laws of 1936 Chapter 118 Section 4, page 295 denied to the appellant the equal protection of the Laws in violation of Section one of the 14th Amendment to the Constitution of the United States.

4. The New Jersey Court of Errors and Appeals erred in affirming the judgment of the New Jersey Supreme Court because said judgment enforced the provisions of 1937 Revised Statutes of New Jersey 17:12-53—*source* New Jersey Pamphlet Laws of 1925 Chapter 65 Section 52, page 212; New Jersey Pamphlet Laws of 1932 Chapter 102 Section 1, page 175, approved April 22, 1932; New Jersey Pamphlet Laws of 1935 Chapter 59 Section 11, page 153 and New Jersey Pamphlet Laws of 1936 Chapter 118 Section 4, page 295 which said statute was unconstitutional as it impaired the obligation of appellant's contract with the appellees in violation of Article 1, Section 10 of the Constitution of the United States.

5. The New Jersey Court of Errors and Appeals erred in affirming the judgment of the New Jersey Supreme Court because said judgment enforced the provisions of 1937 Revised Statutes of New Jersey 17:12-53—*source* New Jersey Pamphlet Laws of 1925 Chapter 65 Section 52, page 212; New Jersey Pamphlet Laws of 1932 Chapter 102 Section 1, page 175; approved April 22, 1932, New Jersey Pamphlet Laws of 1935 Chapter 59 Section 11, page 153 and New Jersey Pamphlet Laws of 1936 Chapter 118 Section 4, page 295 which said statute was unconstitutional as it deprived the appellant of property without due process of law in violation of Section 1 of the 14th Amendment of the Constitution of the United States.

6. The New Jersey Court of Errors and Appeals erred in affirming the judgment of the New Jersey Supreme Court because said judgment enforced the provisions of 1937 Revised Statutes of New Jersey 17:12-53—*source* New Jersey Pamphlet Laws of 1925 Chapter 65 Section 52, page 212;

New Jersey Pamphlet Laws of 1932 Chapter 102 Section 1, page 175, approved April 22, 1932; New Jersey Pamphlet Laws of 1935 Chapter 59 Section 11, page 153 and New Jersey Pamphlet Laws of 1936 Chapter 118 Section 4, page 295 which said statute was unconstitutional as it denied the appellant the equal protection of the Laws in violation of Section 1 of the 14th Amendment to the Constitution of the Uinted States.

7. The New Jersey Court of Errors and Appeals erred in not holding that 1937 Revised Statutes of New Jersey 17:12-53—*source* New Jersey Pamphlet Laws of 1925 Chapter 65 Section 52, page 212; New Jersey Pamphlet Laws of 1932 Chapter 102 Section 1, page 175, approved April 22, 1932; New Jersey Pamphlet Laws of 1935 Chapter 59 Section 11, page 153 and New Jersey Pamphlet Laws of 1936 Chapter 118 Section 4, page 295 to be an unreasonable invasion of the rights of property and an unreasonable impairment of the contract obligation under the guise of police powers, and therefore unconstitutional.

Appellant adopts his assignments of error as his statement of the points to be relied upon.

ARGUMENT.

Summary.

It is proposed to show the unconstitutionality of the statutes in question by establishing the following propositions:

1. The case at bar is controlled by the case of *Treigle* v. *Acme Homestead Association*, 297 U. S. 189.

2. When a person invested his money in prepaid New Jersey Building and Loans shares and paid cash therefore, all prior to 1932, definite contract obligations and property rights exist which are protected by constitutional guarantee. For when a right has arisen under a contract of which a then existing statute is an integral part, the repeal of the statute does not affect that contract, or affect an action for its enforcement.

Treigle v. *Acme Homestead Association*, 297 U. S. 189;
Coombes vs. *Getz*, 285 U. S. 434;
Ettor vs. *Tacoma*, 228 U. S. 148;
Pacific Mail SS. Co. vs. *Joliffe*, 69 U. S. 450;
Bedford vs. *Eastern Building & Loan Association*, 181 U. S. 227.

3. Executory as well as executed contracts are protected from impairment by the Constitution.

Fletcher vs. *Peck*, 6 Cra. (U. S.) 87, 3 L. Ed. 162;
Farrington v. *Tennessee*, 95 U. S. 679.

4. By the legislation of New Jersey now codified in New Jersey 1937 Revised Statutes 17:12-53, the New Jersey Legislature has impaired the contract obligations existing between the appellant and the Building & Loan Association and has taken appellant's property without due process of law.

5. The police power is reserved to the State, and under it every business may be regulated in a degree for the public welfare, but in a reasonable manner and not arbitrarily or with discrimination. While courts may not pass

on the wisdom of legislation, yet they have full power and it is their duty to determine whether the exercise of the police power is reasonable. Legislatures may not, under the guise of the police power, impose restrictions that are unnecessary and unreasonable upon the use of private property or the pursuit of useful activities.

Home Bldg. & Loan Ass'n vs. *Blaisdell*, 290 U. S. 398;

Treigle vs. *Acme Homestead Association*, 297 U. S. 189;

Nebbia vs. *New York*, 297 U. S. 502;

Washington ex. rel. Seattle Title Trust Co. vs. *Roberge*, 278 U. S. 116.

6. The Legislation in question bears no reasonable relation to the public welfare and is unjust and discriminatory and the means adopted by the subsequent legislation is not reasonably adopted to the accomplishment of its alleged purpose.

a. The New Jersey Legislation of 1937 is a permanent codification of law on the subject of Building and Loan Associations, and recognizes and affirms throughout the statute what is and has always been the genius of such associations, namely, the right of the shareholders therein to withdraw their investment.

b. When the object sought by the legislation is to save Building and Loan Associations from liquidation and to revive their business in behalf of the public welfare, there is no reasonable relation between that object and the provisions that instead of

paying withdrawals in full as they reach the top of the withdrawal list, such withdrawing members shall each be paid $50.00 in rotation on the list irrespective of when he filed his withdrawal notice, because it is mathematically demonstrable that in a given time precisely the same amount will be paid out in either case.

c. To delegate to the Board of Directors discretionary power unregulated and unfettered to allocate all of the income to reserves indefinitely is unreasonable and unconstitutional.

d. To delegate to the Board of Directors discretionary power unregulated and unfettered to prevent withdrawals indefinitely is unreasonable and unconstitutional especially because the directors themselves are substantial shareholders.

Eubank v. *Richmond*, 226 U. S. 137, 57 L. Ed. 156; *Washington ex rel Seattle Title Trust Co.* v. *Roberge*, 278 U. S. 116, 73 L. Ed. 210.

e. Subsequent legislation forbidding a suit to recover the withdrawal value of Building and Loan shares which was authorized when the contract was made, is unconstitutional.

f. Legislation which delegates to private boards of directors of Building and Loan Associations the unlimited discretionary power to suspend the prior laws regarding withdrawals, by means of an artificial definition of "net receipts" is unreasonable and unconstitutional.

Forward.

May it Please the Court:

We desire preliminarily to make it clear that the appellant's charges of unconstitutionality are directed at the legislation in question only as it affects the appellant; and we do not suggest that the legislation is invalid prospectively. Neither are we concerned with its application to instalment shareholders or to insolvent building and loan associations. Appellant insists only that, as retroactively applied to appellant, who bought and paid in full for his prepaid shares prior to the enactment of the offending provisions, such legislation is invalid, unjust, discriminatory, arbitrary, unreasonable and unconstitutional.

We proceed to a consideration of the constitutional questions involved.

POINT I.

The case at bar involves definite contract obligations and rights of property.

The New Jersey Court of Errors and Appeals has chosen to rest its decision in this case upon *Bucsi* v. *Longworth Building and Loan Association*, 119 N. J. L. 120. That case rested squarely upon the proposition that the statute there in question (Chapter 102 of the Laws of 1932, now 1937 R. S. 17:12-53) deprived the appellant of valuable contract and property rights, which he had enjoyed prior to its enactment, but justified the subsequent statute as a proper exercise of the police power of the State.

The New Jersey Court of Errors and Appeals, in 1913 declared the rights of a withdrawing shareholder under a prior statute which was similar to the 1925 statute by asserting that the right to sue or set off the withdrawal value applies only to solvent associations. This was decided in *French* vs. *Wolfson*, 88 N. J. L. 669; at page 671 the court said:

> "The argument made is that section 39, among other things provides that a shareholder who has given notice of withdrawal may sue for and recover the withdrawal value of his shares in any such association, in any court of competent jurisdiction if the same is not paid in six months from the date of the giving of said notice of withdrawal, a provision not contained in the old act, and hence, by reason of this change in the act, Gaskill *vs.* Pollemus is not applicable to the case *sub judice*. But we think otherwise. *No doubt that this change gave the withdrawing stockholder a right to sue for the book value of his shares at the expiration of six months from the time of giving notice of his withdrawal.* This clearly negatives any right to sue in advance of the expiration of the six months and as a set off is, in effect a counter suit, no such set off could be permitted until the six months had expired. Now, though the six months have expired, the situation has changed and the dissolution of the association has begun. We think the rights of the parties must be determined as of the time when the stockholders resolved on dissolution, since the statute contemplates that the withdrawals shall be withdrawals from a live concern and not from a defunct one. (Italics ours.)

The case of *Treigle* v. *Acme Homestead Association*, 297 U. S. 189, like the case at bar, deals with a solvent association.

In the case of *Bedford* v. *Eastern Building and Loan Association*, 181 U. S. 227, 240, this Honorable Court in holding that the subscription to building and loan shares constitutes a contract with the association said:

> " • • • By his subscription to stock of the association Bedford became a member of the association —bound to the performance of what its by-laws and charter required of him, and entitled to exact the performance of what the by-laws and charter required of the association. Each acquired a right to what the other promised and there were all the elements of a contract."

In the case of *National Mutual Building and Loan Association* v. *Brahan*, 193 U. S. 635—Mr. Justice McKenna, at page 650 said:

> "In that case, (Bedford *vs.* Eastern Building and Loan Association 181 U. S. 227) there was a consummated contract, and we held *invalid a law enacted subsequently that made the enforcement of the contract depend upon the performance of onerous conditions.*" (Italics ours.)

The Courts of New Jersey have held that the offending provisions in the New Jersey Statute are quite similar to the Louisiana Statutes that were under consideration in the *Treigle* case, and adopt the logic of the Louisiana Supreme Court.

In *Fornataro* v. *Atlantic Coast Building and Loan Association*, 10 N. J. Misc. 1248, 163 A. 240, the Supreme Court of New Jersey sustained Chapter 102 P. L. 1932, as constitutional upon the grounds that the act purports to deal with an existing emergency.

The *Fornataro* case, *supra,* was adopted in *Treigle* v. *Acme Homestead Association,* 181 Louisiana 941 (160 Southern 637), wherein Chief Justice O'Neill said (page 644);

> "Our attention is called to similar statutes which have been enacted in many other states during the last few years of the financial depression; and we are not aware of any instance where provisions such as are questioned in this case have been declared unconstitutional by a court of last resort. In Fornataro and Romano *v.* Atlantic Coast Building and Loan Association, 163 A. 240, 10 N. J. Misc. 1248, the plaintiffs being withdrawing shareholders in the association contended that a statute of 1932 (Chapter 102 P. L. 1932 p. 175, N. J. St. Annual 1932 Sec. 27-R 52) similar to the Louisiana statute of 1932 could not deprive them of their rights acquired under a previous statute (Chapter 65 P. L. 1925 52 p. 212, Comp. St. Supp. 1930, 27 R. 52) without violating the obligations of the contract between them and the association. The Supreme Court of New Jersey ruled against the plaintiff's contention. * * * "

In the case of *Rocker* v. *Cardinal Building & Loan Association,* 13 N. J. Misc. 411, 179 A. 667, affirmed by the Court of Errors and Appeals, 119 N. J. L. 134, 194 A. 865; the New Jersey Supreme Court adopted the opinion in the Louisiana *Treigle* case. Judge Cleary said (p. 676):

> "* * * Treigle *v.* Acme Homestead Ass'n. (Louisiana Supreme Court, decided March 4, 1935.) This case deals with facts and statutes quite similar to those under consideration in the case at bar. The logic of that decision is apparent, is applicable to the present situation, and is adopted by this Court. See, also Building and Loan Annals, 1932 pages

299, 307, for the first and excellent statement of the rules of law enunciated in the Fornataro and Treigle cases and upon which this decision is based."

We now have a situation where Louisiana Supreme Court adopts the view as expressed in the *Fornataro* case, and in a decision by the New Jersey Supreme Court in *Rocker* v. *Cardinal Building and Loan Association* (*supra*), affirmed by the New Jersey Court of Errors and Appeals, the Court adopts the logic of the opinion in the Louisiana *Treigle* case, which was reversed by the Supreme Court of the United States, 297 U. S. 189. Quoting Mr. Justice Roberts, pages 194-196:

> "The Statute impairs the obligation of the appellant's contract and destroys his vested rights in contravention of Article 1, Sec. 10 and Amendment 14 Section 1, of the Constitution. • • • The statute merely attempts for no discernible public purpose, the abrogation of contracts between members and the association lawful when made."

The legislation in the case at bar deprives the appellant of a contractual vested right, and is therefore unconstitutional.

A. Executory contracts as well as executed contracts come within the inhibitions of Article 1, Section 10 of the Constitution of the United States of America.

In the celebrated case of *Fletcher* vs. *Peck*, 6 Cra. (U. S.) 87, 3 L. Ed. 162 on page 133, Mr. Chief Justice Marshall expressed the following opinion:

> "When, then, a law is in its nature a contract, when absolute rights have vested under that con-

tract, a repeal of the law cannot divest those rights * * * "

On page 135 Mr. Chief Justice Marshall said:

"*The constitution of the United States, declares that no state shall pass any bill of attainder expost facto law, or law impairing the obligation of contracts.* (Italics ours) * * * "

"In considering this very interesting question, we immediately ask ourselves, what is a contract? * * * A contract is a compact between two or more parties, and is either executory or executed. An executory contract is one in which a party binds himself to do, or not to do a particular thing; * * * A contract executed is one in which the object of contract is performed * * * *the Constitution uses the general term contract without distinguishing between those which are executory and those which are executed, it must be construed to comprehend the latter as well as the former.*" (Italics ours.)

To the same effect:

Farrington v. *Tennessee*, 95 U. S. 679, at page 682, 683.

In *Bouvier's Revised Law Dictionary*, page 660:

"A contract executed transfers a chose in possession. *A contract executory transfers a chose in action.* (Italics ours.) 2 Bla. Com. 443."

at page 483:

Chose in Action.

"A right to receive or recover a debt, or money or damages for breach of contract."

In the case at bar, under the Statute (R. 1 and 2) and By-Laws (R. 2) in existence at the time appellant entered into his contract, the appellant could withdraw his moneys upon thirty days written notice and could sue and recover the withdrawal value of his shares if the same was not paid in six months from the date of giving of said notice of withdrawal.

Therefore, the subsequent Statute (R. 3 and 5) impairs the obligation of the appellant's contract and destroys his vested rights in contravention of Article 1, Sec. 10 and Amendment 14, Section 1 of the Constitution.

B. The appellant has a vested contract right which cannot be impaired by subsequent legislation.

The appellee (in its motion to dismiss) tries to distinguish the New Jersey Statute by stating that our 1925 Statute affords a "statutory privilege" and not an obligation of contract. It attempts to sustain that theory by a lengthy discourse on "legislative history" and "legislative philosophy".

But such a theory has been long since exploded by this Honorable Court.

It is not a mere legislative gratuity or privilege that is conferred by P. L. 1925, Chapter 65, Sections 49 and 52. We are dealing with a contractual relation existing between the corporation and a member, the law existing at the time of the contract being an integral part of it.

Appellant, upon paying his money to the association and accepting its prepaid shares under the 1925 Statute then in force became vested with a valid contract and a valuable property right. It did not arise upon the constitutional

rule of law, but upon the contractual liability created under and in pursuance of the Statute then in force.

> *Coombes* v. *Getz*, 285 U. S. 434, 76 L. Ed. 866;
> *Ettor* v. *Tacoma*, 228 U. S. 148, 156, 57 L. Ed. 773;
> *Pacific Mail S. S. Co.* v. *Joliffe*, 69 U. S. 450 (2 Wall).

In the case of *Ettor* v. *Tacoma, supra*, the State of Washington had by statute imposed a liability on municipal corporations in favor of property owners sustaining consequential damages to their property as a result of street paving operations. While the statute was in force, suit was brought to recover damages inflicted upon an abutting property in consequence of street grading, done by direction of the City of Tacoma. While the suit was being heard, the statute creating the liability was repealed, and the trial court directed a verdict in favor of the City, on the theory that the right of action was statutory, and fell with the statute, there being no saving clause. This judgment was affirmed, by the State Supreme Court; but on a Writ of Error to the Supreme Court of United States it was reversed, the Court saying, page 156;

> "The necessary effect of the repealing Act, as construed and applied by the Court below, was to deprive the plaintiffs in error of any remedy to enforce the fixed liability of the City to make compensation. This was to deprive the plaintiffs in error of a right which had vested before the repealing act,—and a right which was in every sense a property right. Nothing remained to be done to complete the plaintiffs' right to compensation except the ascertainment of the amount of damage to their property. The right of the plaintiffs in error was fixed by the

law in force when their property was damaged for public purposes, and the right so vested cannot be defeated by subsequent legislation."

In the case of *Coombes* v. *Getz, supra*, there was presented a controversy wherein a creditor had brought suit against a director of a corporation, claiming liability by the director for a bill of goods which the creditor had sold to the corporation on open account. At the time the bill of goods was sold, there was a constitutional provision in force in the State of California, which made directors of corporations liable in the event of failure to pay corporate indebtedness by virtue of embezzlement of corporate funds. In this case, the Supreme Court of California held, that the director was not liable, because the constitutional provision creating the liability had been repealed, before the suit of the creditor against the director was reduced to judgment. The Supreme Court of the United States held, however, that the directors, in taking their oath of office, impliedly accepted the obligations imposed by the constitutional provision of the California Constitution; and since the merchandise had been sold to the corporation while this rule of law was in full force and effect, a contract right in the provisions of law was created, which it was incompetent for the State to repeal, and thus to impair the obligation of the creditor's contract.

In each of the two cases just cited, it was contended that the obligation claimed to have been impaired by the subsequent legislation was an obligation imposed by statute merely and subject to legislative repeal, and was not a contractual obligation.

Mr. Justice Sutherland in *Coombes* vs. *Getz, supra,* thus disposes of this contention, at page 442:

> "The right of this petitioner to enforce respondent's liability had become fully perfected and vested prior to the repeal of the liability provision. His cause of action was not *purely* statutory. It did not arise upon the constitutional rule of law, but upon the contractual liability created in pursuance of the rule. *Although the latter derived its being from the former, it immediately acquired an independent existence competent to survive the destruction of the provision which gave it birth. The repeal put an end to the rule for the future, but it did not and could not destroy or impair the previously vested right of the creditor, (which in every sense was a property right).*" (Italics ours.)

The Court in *Pacific Mail S. S. Co.* v. *Joliffe,* 69 U. S. 450 (2 Wall) expressed the same thought in these words at page 457:

> "The claim of the plaintiff below for half-pilotage fee, resting upon a transaction regarded by the law as a *quasi* contract, there is no just ground for the position that it fell with the repeal of the statute under which the transaction was had. When a right has arisen upon a contract, or a transaction in the nature of a contract authorized by statute, and has been so far perfected that nothing remains to be done by the party asserting it the repeal of the statute does not affect it, or an action for its enforcement. It has become a vested right which stands independent of the statute. And such is the position of the claim of the plaintiff below in the present action; the pilotage services had been tendered by him, his claim to the compensation prescribed by the

statute was then perfect, and the liability of the master or owner of the vessel had become fixed."

Indeed, the fallacious theory advanced by the appellee was raised in the *Treigle* case almost from its inception. An inspection of the record in that case, on file in the library of this Honorable Court discloses that Judge Gleason, in his opinion at page 19 of the Treigle transcript adverts to the "purely statutory" theory advanced by the defendants, and discards it. In the brief in the *Treigle* case filed by the appellee in this Court (page 32) the heading is found as follows "A shareholder's right of withdrawal in a building and loan association is purely statutory, is always within the control of the Legislature and may be altered by the Legislature in its discretion. It has none of the characteristics of a conventional agreement, or a vested right."

Again, in the brief *amicus curiae*, in behalf of the U. S. Building and Loan League in the *Treigle* cases filed in this Honorable Court, the greater part of that brief is written in an attempt to sustain their fallacious argument that the appellant's rights are not contractual but purely statutory and can be changed or altered at the will of the Legislature.

Again, in the petition for rehearing filed by John Warren in the *Treigle* case in this Honorable Court, in behalf of the Banking Departments of the States of Indiana, Illinois, Wisconsin and Texas, he argues that the Louisiana statute accords but a privilege to the withdrawing shareholder and not a contractual or vested right.

Thus it appears that this matter of "statutory privilege" as distinguished from a contractual and vested right

was fully presented to this Honorable Court in the *Treigle* case and we respectfully submit that the decision in that case 297 U. S. 189 lays that fallacious notion to rest for all time in the following words at page 194:

> "The statute impairs the obligation of appellants' contract and destroys his vested rights in contravention of Article 1, § 10 and Amendment 14, § 1 of the Constitution."

C. What contract obligations and property rights existed.

Let us see what were the obligations of the contract and property rights of appellant.

1. The association had become obligated to pay appellant the amount of his investment on 30 days notice.

2. The association had become obligated to pay appellant 6 per centum per annum on his investment.

3. Appellant had the right to expect the association to actually allocate 50% of its gross receipts each month for the payment of withdrawals.

4. When the appellant's name reached the top of the withdrawal list the association became obligated to pay him the withdrawal value of his shares before any other member should be paid.

5. When appellant's notice of withdrawal had been on file for 6 months he had an absolute right to immediate payment.

6. When the ordinary allocations to withdrawals was not sufficient to liquidate all withdrawals prior to appellant's within six months from his giving his notice of with-

drawal, the obligation could be judicially enforced by court action.

All of the rights we have enumerated are things the Association was obligated to do. These are true obligations and not mere remedies which do not affect substantially the obligation; we quote the Supreme Court of United States in the case of *Von Hoffman* vs. *Quincy*, 71 U. S. 535, 4 Wall 535, 18 L. Ed. 403 at page 552.

> "It cannot be doubted, either upon principle or authority, that each of such laws passed by a State would impair the obligation of the contract, and the last mentioned not less than the first. Nothing can be more material to the obligation than the means of enforcement. Without the remedy the contract may, indeed, in the sense of the law, be said not to exist, and its obligations to fall within the class of those moral and social duties which depend for their fulfillment wholly upon the will of the individual. The ideas of validity and remedy are inseparable, and both are parts of the obligation, which is guaranteed by the Constitution against invasion. The obligation of the contract 'is the law which binds the parties to perform their agreement'. Sturges *vs.* Crowninshield, 4 Wheat. 122. The prohibition has no reference to the degree of impairment. The largest and least are alike forbidden. In Green *v.* Biddle, 8 Wheat. 84, it was said: 'The objection to a law on the ground of its impairing the obligation of a contract can never depend upon the extent of the change which the law effects in it. *Any deviation from its terms by postponing or accelerating the period of performance which it prescribes, imposing conditions not expressed in the contract, or dispensing with those which are, however minute or apparently im-*

material in their effect upon the contract of the parties impairs its obligation. Upon this principle it is that if a creditor agree with his debtor to postpone the day of payment, or in any other way to change the terms of the contract, without the consent of the surety, the latter is discharged, although the change was for his advantage'." (Italics ours.)

In *Bronson* vs. *Kinzie*, 1 How. 311, 317, Chief Justice Taney said:

> "It is difficult perhaps to draw a line that would be applicable in all cases between legitimate alterations of the remedy and provisions which, in the form of remedy, impair the right. But it is manifest that the obligation of the contract, and the rights of a party under it may, in effect, be destroyed by denying a remedy altogether; or may be seriously impaired by burdening the proceedings with new conditions and restrictions, so to make the remedy hardly worth pursuing."

In *Louisiana* v. *New Orleans*, 102 U. S. 203, 206, Mr. Justice Fields, in the opinion of the court said:

> "The obligation of a contract, in the constitutional sense, is the means provided by law by which it can be enforced—by which the parties can be obliged to perform it. Whatever legislation lessons the efficacy of these means impairs the obligation. If it tend to postpone or retard the enforcement of the contract, the obligation of the latter is to that extent weakened."

To same effect:

Seibert v. *Lewis*, 122 U. S. 284.

We submit therefore, that not only did the New Jersey Court of Errors and Appeals rest its decision upon the proposition that contract obligations and property rights were involved, but analysis shows this proposition to be sound, that such contract obligations and property rights in fact existed.

POINT II.

New Jersey 1937 Revised Statutes 17:12-53 and its sources impairs the contract obligation and takes the property to which the appellant was entitled.

Appellant denounces as unconstitutional New Jersey 1937 Revised Statutes 17:12-53, and its sources and we have reproduced this section in Appendix page 57. The New Jersey Court of Errors and Appeals in *Busci* vs. *Longworth Building and Loan Association, supra*, at page 130 admits that the appellant was deprived of a vested right of contract which he had enjoyed under the 1925 Act.

Let us, however, advert to New Jersey 1937 R. S. 17:12-53 to discover if and to what extent obligations have been impaired and property taken by this section.

Contract Obligations.

Section 52 of the 1925 Act (Appendix, p. 49) provides for a withdrawal list and payment is required to be made in the order in which the notices shall have been received. In this Act the word "receipts" is used in the ordinary bookkeeping sense, and one-half of said receipts are required to be used for the payment of withdrawal claims.

The 1925 Act further provides that in no case shall payment be postponed for a period longer than six months from the date of such notice and any member may sue for and recover the withdrawal value of his shares if the same is not paid in six months from the date of giving said notice of withdrawal.

The subsequent legislation now codified into New Jersey 1937 Revised Statute 17:12-53 destroys every essential obligation of appellant's contract. It provides that but one-third of the net receipts need be made available for the payment of withdrawals. No longer is the association obliged to pay the withdrawing member the withdrawal value of his shares, upon his reaching the top of the list. The obligation has been impaired so that it becomes an obligation to pay $50.00 in rotation to each member on the withdrawal list *irrespective of the time his name was placed thereon*, with the result that, perhaps in some far off day, he may (or may not) receive what it was the association's contract obligation to pay him in the first place.

And not only this, but furthermore sub-section "d" of the present Act discards completely the ordinary bookkeeping definition of "net receipts" and sets up a completely artificial definition for those words as follows (Appendix, p. 57):

> "* * *; and the words 'net receipts' as used in this section shall be construed to mean moneys, other than borrowed moneys received by any such association *less moneys used for operating expenses, moneys used to pay creditor obligations, moneys used for the conservation, preservation or protection of the property and assets of such association, and moneys reserved for any such purposes.*" (Italics ours.)

Think of it! By this completely artificial definition of the words "net receipts" the Legislature has attempted to vest in the Board of Directors absolute discretion and authority to appropriate all of the income of the association *indefinitely* to the above purposes and has attempted to give the Board of Directors absolute power and authority *unfettered* to appropriate the entire income of the association *indefinitely* for the purpose of reserves, without making any provision whatsoever for the payment of withdrawals. None of this is contained in the 1925 Act. This we submit is arbitrary and oppressive legislation. This is not American legislation. It is totalitarian. It is not only an impairment of contract but in fact a complete taking of property without due process of law.

But the worst is yet to come! This new legislation codified in the 1937 Revision 17:12-53 sub-section "e" provides as follows (Appendix, p. 58):

> "e. No member to whom such association shall be obligated for payment of any maturity or withdrawal shall have the right to bring suit against such association to recover the maturity or withdrawal value of his shares or any part thereof so long as the funds of such association shall be applied as required by this section."

So long as the directors in their absolute discretion, unfettered, appropriate all of the income of the association to cash reserves *indefinitely*, every member to whom such association is obligated by contract is perpetually enjoined from exercising any and all of his vested contract rights.

We do not conceive any possible justification for such an enactment. This section wipes out every vestige of obli-

gation of the Association towards its withdrawing members which existed and was vested when the contract was made.

The statute emasculates the contract: It impairs every obligation in question: It divests every property right we have declared upon: It does so without any condition and without offering any compensation.

As to appellant such legislation clearly impairs contract obligations in violation of Section 10 of Article 1 of the Constitution of the United States.

Property Rights.

What we have said above in regard to "Contract Obligations" applies with equal force with respect to the "due process" clause of the Federal Constitution.

1. The new legislation now codified in New Jersey 1937 Revised Statutes 17:12-53 accords to the Board of Directors of the appellee corporation an unregulated discretion in the accumulation of funds. They have absolute discretion and authority to allocate all of the income to expenses and reserves, indefinitely, thereby subjecting the appellant's property or investment in the appellee Association, and its recovery, to a control and power never sanctioned or consented to by the appellant. And this control and power if extended to the extreme possibilities permitted by the statute would make it impossible *ever* to recover any of the moneys invested in the appellee association.

2. Prior to the effective date of the new legislation which is now codified in New Jersey 1937 Revised Statutes 17:12-53 appellant was possessed of a "property right" and a "vested right" to enforce return of his investment by mandatory process, and to recover his money with in-

terest on 30 days notice; and such "property rights" and "vested causes of action" were acquired for a valuable consideration which consisted in his payment in full for his shares and his surrender of any and all right to participate in the general profits of the association.

3. The complete abrogation of this "property right" and "vested cause of action" (whichever it may variously be called), by the provisions of the new legislation, constitutes a "taking" whether for a "public purpose" or a "private benefit", and in either case violates the provisions of the Federal Constitution.

To constitute a "taking" of property, within the meaning of the 14th Amendment of the Federal Constitution, it is unnecessary that there be an out and out appropriation of the physical property.

In *Chicago, R. I. & P. R. Co.* v. *United States*, 284 U. S. 80, 96, 76 L. Ed. 177, 186, the Supreme Court said:

> "Confiscation may result from a taking of the use of property without compensation quite as well as from the taking of the title. Chicago, N. & S. P. R. Co. *v.* Minnesota, 134 U. S. 418, 458, 33 L. Ed. 970, 981, 3 Inters. Com. Rep. 209, 10 S. Ct. 462, 702; Reagan *v.* Farmers' Loan & T. Co., 154 U. S. 362, 410, 412, 38 L. Ed. 1014, 1027, 1028, 4 Inters. Com. Rep. 560, 14 S. Ct. 1047; Chicago, M. & S. P. R. Co. *v.* Wisconsin, 238 U. S. 491, 498, 499, 59 L. Ed. 1423, 1429, 1430, L. R. A. 1916 A, 1133, P. U. R. 1915 D, 706, 35 S. Ct. 869. The use of railroad property is subject to public regulation, but a regulation which is so arbitrary and unreasonable as to become an infringement upon the right of ownership constitutes a violation of the due process of law clause of

> the 5th Amendment. Atlantic Coast Line R. Co. *v.* North Carolina Corp. Commission, 206 U. S. 1, 20; 51 L. Ed. 933, 942, 27 S. Ct. 585, 11 Am. Cas. 398."

As already pointed out, the new legislation now codified in New Jersey 1937 R. S. 17:12-53 abolishes in specific and unambiguous language, all obligation on the part of the Building and Loan Associations to set aside or allocate any definite segment of "receipts" from which withdrawing shareholder's investments may be discharged. Then, in what seems to have been an extra effort to insure the accomplishment of this purpose, the Legislature leaves to the unregulated and uncontrolled discretion of the board of directors, not only the discharge of the duty or obligation but the sole control, administration and the amount of funds to be accumulated for the purpose.

POINT III.

The police power does not save the legislation from unconstitutionality.

We consider this point to have been set at rest for all time in this Honorable Court by its decision in the case of *Treigle* v. *Acme Homestead Association*, 297 U. S. 189—in these words, at 197:

> "The Legislature has no greater power to interfere with the private contracts of such corporations, or vested rights of their stockholders as such under the pretext of public necessity, than it would have to attempt the same ends in a case of a private corporation."

The New Jersey Court of Errors and Appeals decided the case of *Bucsi* v. *Longworth Building and Loan Associa-*

tion (supra), after the decision in the *Treigle* case was rendered by this Honorable Court, and in fact in the *Bucsi* case they mention and quote from the *Treigle* decision. However, in the *Bucsi* case they say, 119 N. J. Law 120, 127:

> "It may very well be that the statute in Louisiana was not passed 'for an end which is in fact public' but the situation which faced our Legislature in 1932, if allowed to run unregulated to its apparent and ultimate economic conclusion, would have affected adversely every person in this State."

The Court proceeds to recite the economic conditions as they are alleged to have existed in New Jersey in 1932 and proceeds as follows at page 130:

> "The structure of the tax base and the widespread membership in building and loan associations, and the fact that the value of the real estate mortgages and real property owned by such associations represent a high percentage of the total value of all taxable real estate in the state, creates a situation which is peculiar to this state. It does not appear from the record of briefs in the Treigle *v.* Acme Homestead Ass'n, *supra*, that a comparable situation exists in Louisiana."

It is respectfully submitted, however, that these very questions and proofs were before this Honorable Court when the *Treigle* case was argued. An examination of the record and briefs in the *Treigle* case on file in the Library of this Honorable Court discloses that the original answer filed by the defendant in the court of first instance under paragraph XV (*Treigle* record, pp. 13, 14, 15, 16 and 17), are concerned exclusively with a recital of the adverse effects of the economic depression in Louisiana

upon the building and loans of that state. Judge Gleason, sitting in the Court of first instance nevertheless sums it all up in these words (*Treigle* record, p. 30):

> "If these provisions are defensible under our constitutional guarantees, one might as well write out of the constitution these fundamental guarantees of government, and leave to the whims of the respective legislatures the destiny of all contractual relations."

The opinion of the Supreme Court of Louisiana in *Treigle* vs. *Acme Homestead Association*, 181 La. 941, treats this situation.

Again the economic situation in Louisiana was discussed at page 13 of the appellee's brief in the *Treigle* case, and the economic effect of the depression upon Building and Loan Associations in Louisiana.

An examination of the *Treigle* record and briefs, therefore discloses that when the New Jersey Court of Errors and Appeals in the *Bucsi* case stated that it does not appear from the records and briefs in *Treigle* v. *Acme Homestead Association, supra*, that a comparable situation exists in Louisiana, that honorable court was in error. In fact, the record and briefs in the *Treigle* case disclose that the identical situation which the New Jersey Court of Errors and Appeals alleged to exist in New Jersey was also alleged by the appellee in the *Treigle* case to exist in Louisiana and was even set forth in detail in the very first pleading filed by the appellee in the *Treigle* case. Furthermore, the New Jersey Court of Errors and Appeals, passed upon this very question prior to the *Bucsi* case in *Braunstein* v. *Jersey City*, 98 N. J. L. 479 (p. 480):

> "* * * The arguments of emergency and 'police power' alluded to in the other case are reiterated here * * * are authority for the validity of the statute under which exemption from tax is now claimed. On this phase of the case it is sufficient to say that the statutes involved in those decisions related in no way to tax exemption, nor to any repugnancy of a state statute to a plain mandate in a state constitution, but to statutes affecting the contract relation of landlord and tenant, with which we are in no way concerned at this time, and hence we deem them inapplicable and irrelevant to the question before us, which is, whether the Exemption Act of 1920 is plainly in violation of the constitutional provision that property shall be assessed for taxation under general laws and by uniform rules according to its true value, as it manifestly is, can be supported on any theory of 'emergency' or of so called 'police power'. *As to this, we specifically concur in the view expressed by the Supreme Court in the Koch case that a pressing emergency is no ground for violation of a constitutional provision, and that the 'police power' broad as it is, cannot be exercised in defiance of constitutional limitations.*" (Italics ours.)

Finally, upon this phase of the case, we would refer to the long line of decisions in which statutes of this sort, which have sought under the guise of police power to take property rights from, or to impair the contract obligations of one person or class of persons for the benefit of another person or class of persons have repeatedly been held to be unconstitutional.

The *Minnesota Moratorium* case, *Home Building & Loan Association* vs. *Blaisdell*, 290 U. S. 398, cites and discusses them all, from *Bronson* v. *Kinzie*, 1 Howard 311, on down

to the present time; and points out that the protection of one class of persons at the expense of another class may only be justified as emergency legislation if reasonably conditioned. If the legislation is temporary and consideration is allowed for temporary taking of property, the legislation may be constitutional.

The New Jersey 1937 Revised Statutes 17:12-53 is a part of this permanent statutory law of the State and not emergency legislation.

In fact, the New Jersey Court of Errors and Appeals in *Bucsi* v. *Longworth Building and Loan Association (supra)*, specifically admits that this legislation is out of the class of mere emergency legislation.

It should be pointed out that nowhere in the record in the case at bar is it alleged or even suggested that a situation exists *now* in New Jersey similar to that which was alleged to have existed in New Jersey and in Louisiana in 1935-1936, when the *Bucsi* case was decided. Over three years have elapsed since that decision was rendered.

Indeed, some of the very States that a few years ago enacted and so diligently defended their mortgage moratorium laws—have recently declared that a re-enactment of the very same statute is now a violation of the contract clause of the Federal Constitution. We allude to the following cases:

First Trust Co. of Lincoln vs. *Smith*, 134 Neb. 84; 277 N. W. 762;

First Trust Joint Stock Land Bank of Chicago vs. *Arp.*, 225 Iowa 331; 283 N. W. 441;

Jefferson Standard Life Ins. Co. vs. *Noble*, Sup. Ct. of Miss. (not yet officially reported) 188 So. 289.

All of the above illuminating decisions are based on a two-fold proposition: (1) an emergency connotes a crisis or catastrophe—By the very word itself it cannot continue as an emergency for any great length of time, for, if it does continue, it ceases to be an emergency and becomes a status—a normal situation, and (2) times have materially improved since 1932 so that we do not have *now* a situation comparable to that which then existed. These cases review the economic situation of the Nation as of 1934 and compare that with the economic situation *now*. They all find that the situation today has so generally improved that the emergency—the crisis—is past. They therefore conclude that the principal enunciated in *Home Building and Loan Association* v. *Blaisdell*, 290 U. S. 398 no longer applies, and the police power today does not save this legislation from the attack of unconstitutionality.

What is true in those States undoubtedly is true in New Jersey today. The emergency is past. The necessity of invoking the police power is over, and the inhibition contained in the Federal Constitution against the impairment of contracts is again supreme.

POINT IV.

The legislation in question is unreasonable, unjust and discriminatory and the means adopted by the subsequent legislation is not reasonably adapted to the accomplishment of its alleged purpose.

In *Treigle* vs. *Acme Homestead Association, supra,* Mr. Justice Roberts in referring to the Louisiana legislation said, at 196:

> "Under existing law, and the appellants contract, 50 per cent of the receipts of the association had to be set apart to pay withdrawing members. By the new legislation this requirement is abolished and the amount to be set aside is left to the sole discretion of the directors. They are authorized to apply the association's receipts to the making of loans, to the payment of old or new debts, to dividends to continuing members or to the creation of a cash reserve for future dividends. *The sections permitting such use of the amounts collected do not tend to conserve the assets of the association, to render it more solvent, or to insure that its affairs will be administered so as to protect the investments of the continuing and withdrawing members. They do alter the rights of the withdrawing members as between themselves and as against continuing members.*" (Italics ours.)

An examination of the New Jersey Statutes clearly discloses that this legislation, like the Louisiana legislation, is open to the same criticism.

The 1925 Statute of New Jersey provides that one-half of the receipts of the association shall be required to be

used for the payment of withdrawal claims until the oldest of such claims then unpaid shall have been on file for a period of six months, but in no case shall payment be postponed for a period longer than six months, and after the six months period any member may sue for and recover the withdrawal value of his shares. By the new New Jersey legislation these requirements are abolished and the amount to be set aside is left to the discretion of the directors. They are authorized to use what income they see fit for operating expenses of all kinds, for the payment of creditor obligations, old and new, for the conservation, preservation and protection of the property and assets of the association and for establishing reserves for any of such purposes. The balance of the income, if any there be, is to be used one-third for the payment of maturities, one-third for the payment of withdrawals, and no provision is made for the disposition of the balance, so it may be used for new loans if the directors so determine. The new legislation of New Jersey further provides that no member shall have the right to bring suit against the association for the recovery of the withdrawal value of his shares so long as the funds of the association shall be applied as required by that section. It is clear, therefore, that the new New Jersey legislation like the new Louisiana legislation does not tend to conserve the assets of the association to render it more solvent or to insure that its affairs will be administered so as to protect the investments of the continuing and withdrawing members. The new legislation in New Jersey does alter the rights of the withdrawing members as between themselves and as against continuing members.

It is quite evident that if the legislation in question does not bear reasonable relation to the public welfare, or

is arbitrary or discriminatory, then, if it impairs the contract obligations or takes property without due process, it is unconstitutional.

Worthen v. *Thomas*, 292 U. S. 426;
Home Building & Loan Association v. *Blaisdell*, 290 U. S. 398.

The New Jersey Court of Errors and Appeals in its opinion in *Bucsi* vs. *Longworth Building and Loan Association, supra,* said that the legislation in question is not arbitrary or capricious and bears reasonable relation to a legitimate end. But, with due respect, we say that that Honorable Court has fallen into grievous error in its appreciation of the relationship between the sections of the 1937 Revision under discussion and the object sought to be attained by the Legislature.

Let us take sub-section "d" of the 1937 Revision 17:12-53 which provides for the payment of withdrawals at rate of $50.00 to each member in rotation as his name may appear on the withdrawal list. There is *no reasonableness whatever* in this provision of the act with respect to saving Associations from liquidation, because it is a very simple mathematical proposition that in a given space of time they will pay out *exactly the same amount* under the $50.00 rotation system as they would if they had paid 100% to each withdrawing member as he reached the top of the list.

No, may it please the Court, all the $50.00 rotation system of 1937 R. S. 17:12-53 does is to take the greater part of what was already vested in me and pay it to somebody else—no reasonable relation here, but arbitrary re-distribution of wealth!

There never has been a decision in the Supreme Court of the United States that remotely suggests the constitutionality of a Statute enacted under the guise of saving an industry from possible destruction—the real and only possible purpose of which is to destroy contract obligations and to divest and take vested property rights in order that other private citizens may have, use and enjoy those rights.

When we examine sub-section "d" 1937 R. S. 17:12-53 further we find a more unreasonable and intolerable situation.

Instead of the provisions of the 1925 Act and the contract between the appellant and Sixth Ward Building and Loan Association that at least one-half of the net receipts must be allocated to the payment of withdrawals and that after six months the withdrawing member may sue for and recover the withdrawal value of his shares, this new section vests in the board of directors of each association the absolute and unregulated discretion to allocate nothing whatsoever to "net receipts", one-third of which must be made available for payment of withdrawals and at the same time the uncontrolled and absolute discretion to set up and create reserves of every kind, including cash reserves, unlimited as to amount and to pay creditor obligations, old and new, to incur and pay operating expenses of all kinds.

Now, it is to be borne in mind that no standard is fixed by the Legislature by which the discretion of the directors is to be regulated. The discretion is unregulated.

This is not exercise of police power by the Legislature, it is a delegation of police power by the Legislature to a

private board. This is contrary to the decision of *A. L. Schechner Corporation* v. *United States*, 295 U. S. 495, when read in the light of Articles 3 and 4 Section 1 of the New Jersey State Constitution.

Not only that! The Legislature by the very act stamps with its approval the payment in full of withdrawals when the 1937 statute directs the directors to allocate one-third of the so-called "net receipts" for that purpose.

Therefore, the Legislature has not declared or determined that withdrawals should be prevented, curtailed or obstructed as inconsistent with public welfare. The Legislature has nowhere declared or provided that withdrawals should be regulated for any given time or under any set of circumstances.

The Legislature merely vests in a board of directors the absolute and unregulated discretion to prohibit all withdrawals indefinitely, by allocating nothing with which to pay them, and at the same time to continue to use the original money invested by the withdrawing shareholder without paying him any dividends whatever.

The legislation as contained in New Jersey 1937 R. S. 17:12-53 is unconstitutional because police power must be exercised by the sovereign through the law making body and cannot be delegated to private persons or private boards especially unguided by any prescribed standard, and more particularly when such private boards are possessed of rights and privileges which are augmented and furthered to the same degree as they by their actions derogate from the rights and privileges of others. *Directors are also substantial shareholders.*

This Court has at least twice declared unconstitutional such delegations of power.

In *Eubank* v. *Richmond*, 226 U. S. 137, 57 L. Ed. 156, the Court had before it a situation very similar to the instant case.

In that case an ordinance of the City of Richmond, Va. enacted under authority of a legislative act of that State, provided that whenever two-thirds of the property owners fronting on a street petitioned the Commission on Streets to fix the building line along the street, the Commission was required to fix said line within limits of 5 to 30 feet from the street line. Eubank, the plaintiff, had, before passage of the ordinance obtained a permit to erect a dwelling and had ordered material for its construction, although actual building had not commenced, when he was notified that the bay-window of his proposed house projected over the line thus fixed, by three feet. He was ordered to revise his plans accordingly. Suit was filed attacking the constitutionality of the statute and ordinance, on the ground that it operated to deprive him of property "without due process of law". The Supreme Court of Virginia upheld the statute and ordinance, but on Writ of Error to the Supreme Court of the United States the action of the state court was reversed, the court saying, at page 143:

> "It (the statute and ordinance) leaves no discretion in the committee on streets as to whether the street line shall or shall not be established in a given case. The action of the committee is determined by two-thirds of the property owners. In other words, part of the property owners fronting on the block determine the extent of use that other owners shall

make of their lots, and against the restriction they are impotent. This we emphasize. One set of owners determines not only the extent of use, but the kind of use which another set of owners may make of their property. In what way is the public safety, convenience, or welfare served by conferring such power? The statute and ordinance, while conferring the power on some property holders to virtually control and dispose of the property rights of others, creates no standard by which the power thus given is to be exercised; in other words the property holders who desire and have the authority to establish the line may do so solely for their own interest, or even capriciously. * * * The only discretion, we have seen, which exists in the street committee or in the committee of public safety, is in the location of the line between 5 and 30 feet. It is hard to understand how public comfort or convenience, much less public health can be promoted by a line which may be so variously disposed.

"We are testing the ordinance by its extreme possibilities to show how in its tendency and instances it enables the convenience or purpose of one set of property owners to control the property right of others. * * * One person, having a two-thirds ownership of a block may have that power against a number having a less collective ownership. If it be said that in the instant case there is no such condition presented, we answer that there is control of the property of plaintiff in error by the owners of property, exercised under the ordinance. This, as we have said, is the vice of the ordinance, and makes it, we think, an unreasonable exercise of the police power."

We submit the control granted to the board of directors of the defendant associations over the property and rights

of appellant by the provisions of the 1937 Act are no less offensive to the provisions of the Federal Constitution than in the *Eubank* case. They constitute a "taking", and are not justifiable under the "police power".

In the case of *Washington, ex rel Seattle Title Trust Co.* v. *Roberge*, 278 U. S. 116 73 L. Ed. 210, the court again applied this principle.

The City of Seattle in 1923 passed a comprehensive zoning ordinance dividing the city into six "use" districts, and provided that no building might be erected for any purpose other than that permitted in the district in which the site is located.

Since 1914 Seattle Title Trust Co. as trustee owned and maintained in one of these "use" districts a philanthropic home for aged poor. The trustee proposed to replace the building with a larger and more modern building on the same site, which would have been in no sense a nuisance.

The site was in the "first residence district", where dwellings, schools, churches, banks, boarding houses, etc. were permitted. In 1925 an amendment to the ordinance provided that "a philanthropic home for children or old people shall be permitted in first residence district when the written consent shall have been obtained of the owners of two-thirds of the property within 400 feet of the building."

The trustee, when he was refused a permit without such written consent, resisted the ordinance as invalid, as repugnant to the due process clause.

The Court held the ordinance unconstitutional, saying at page 121:

"The right of the trustee to devote its land to any legitimate use is properly within the protection of the Constitution. The facts disclosed by the record make it clear that the exclusion of the new home from the first district is not indispensable to the general zoning plan. And there is no legislative determination that the proposed building and use would be inconsistent with public health, safety, morals or general welfare. The enactment itself plainly implies the contrary. The grant of permission for such building and use, although purporting to be subject to such consents, shows that the legislative body found that the construction and maintenance of the new home was in harmony with the public interest and with the general scope and plan of the zoning ordinance. The section purports to give the owners of less than one-half the land within 400 feet of the proposed building authority—uncontrolled by any standard or rule prescribed by legislative action—to prevent the trustee from using its land for the proposed home. The superintendent is bound by the decision or inaction of such owners. There is no provision for review under the ordinance; their failure to give consent is final. They are not bound by any official duty, but are free to withhold consent for selfish reasons or arbitrarily, and may subject the trustee to their will or caprice. Yick Wo *v.* Hopkins, 118 U. S. 356, 366, 368, 30 L. Ed. 220, 225, 226, 6 Sup. Ct. Rep. 1064. The delegation of power so attempted is repugnant to the due process clause of the 14th Amendment. Eubank *v.* Richmond, 226 U. S. 137, 143, 57 L. Ed. 156, 158, 42 L. R. A. (N. S.) 1123, 33 Sup. Ct. Rep. 76, Ann. Cas. 1914 B. 192; Browning *v.* Hooper, 269 U. S. 396, 70 L. Ed. 330, 46 Sup. Ct. Rep. 141."

We earnestly submit that in the 1937 Act there is no legislative determination that withdrawals by shareholders would be inconsistent with public welfare. Perhaps the Legislature might have for a limited time forbidden withdrawals. But they did no such thing. They permit, they sanction withdrawals and so indicate plainly that they find the withdrawal of shares in harmony with the public interest.

After doing this, the Legislature takes away all power of the Courts to compel allocation of any portion of net receipts to a fund to accomplish withdrawal; and moreover, in delegating the unregulated power to the numerous boards of directors of the Building and Loans to determine the amount or segment of revenues, if any at all, to be allocated to withdrawals, the legislature has placed in the hands of continuing members of the Associations the power to use for their own aggrandizement the property and funds of withdrawing members without compensation and indefinitely.

The provisions of this Act as gleaned from the Act itself have no such relation to the public welfare as to justify the destruction, in a retroactive manner, of the private rights of the appellant. The 1936 statute is now codified in the 1937 Revision as a permanent part of the statutory law of New Jersey. Thus we see it is not an emergency measure.

The right to withdraw the money invested in shares of a Building and Loan Association is the essential difference between such associations and ordinary corporations. This right is the genius of such associations. Nowhere in the new legislation does the Legislature undertake to declare it to be against public welfare that such withdrawals be per-

mitted. On the contrary, the genius of the institution and the public welfare of New Jersey both require the right to withdraw.

The new legislation has, however, left to the withdrawing shareholders no means whatever to enforce their rights; the new legislation has, moreover placed it within the power of continuing members, unrestrained and unregulated by judicial process, to use appellant's property, indefinitely and without compensation and has taken from the appellant, forever, his right to sue for and recover the withdrawal value of his shares.

Conclusion.

We again suggest that the legislation may be constitutional in its prospective application, but that it is clearly unconstitutional as applied retroactively to existing contract obligations and vested rights. We are not here concerned with instalment shareholders or borrowing shareholders. Their rights may be different, but are not here involved. We insist only that the new statutes now codified in New Jersey 1937—Revised Statutes 17:12-53 are unconstitutional as to appellant, a pre-paid shareholder who invested his money and took his shares long prior to their enactment.

We submit that the new statutes now codified in New Jersey 1937 Revised Statutes 17:12-53 denounced by us impair the essential obligations of a contract between appellant and the Association which obligations became fixed vested and mandatory under the 1925 statute; that such new legislation impaired appellant's contract rights and divested his property without due process of law.

We do not dispute that the business of Building and Loan Associations may be, in a measure, regulated under the State's reserved police power, but we insist that all such regulation when it affects contract obligations and property rights must be reasonable—the regulation must be such as has reasonable relation to the legitimate end in view; must be in harmony with the fair interest of the Constitutional limitation.

None such here! But arbitrary impairment of contract and divesture of property rights without due process, unjust discrimination of one shareholder in favor of other shareholders, and a taking of one's property forever. No temporary moratorium as in Minnesota, but permanent retroactive confiscatory and discriminatory legislation which has not been and cannot be justified under our Federal Constitution.

It is respectfully submitted that the judgment of the New Jersey Court of Errors and Appeals and of the New Jersey Supreme Court should be reversed; New Jersey 1937 Revised Statutes 17:12-53 and its various sources from 1932 to its enactment should be declared unconstitutional, and judgment entered in favor of the appellant in accordance with his original complaint.

Respectfully,

WALTER P. REILLY,
JAMES L. HANDFORD,
Counsel for Appellant.

APPENDIX.

By-Laws of the Sixth Ward Building and Loan Association of Newark, New Jersey (R. 67).

ARTICLE XIX. Prepaid shares.

Section 2.—Prepaid shares shall bear interest payable semi-annually on the First day of May and November of each year, at such rate as the Board of Directors may determine at date of issue and may be withdrawn by the holder thereof, upon giving Thirty days written notice prior to any regular meeting of the Association.

Legislative Acts of New Jersey.

Building & Loan Revision of 1925.

An Act Concerning Building and Loan Associations (Revision of 1925), N. J. Pamphlet Laws of 1925, Chapter 65, Section 49, and 52, pp. 211, 212, 213.

49. How withdrawn.

The shares of every such association of this State, or doing business therein, may be withdrawn by the holder at any time, by giving such written notice as may be provided for in the constitution or by-laws, not to exceed thirty days; if the withdrawal be made within the first year, the withdrawal value of the shares withdrawn shall be not less than the sum of the subscription or dues paid on such shares, less a proportionate share of any loss sustained by such association; after the first year a reasonable share of the profits less unpaid fines shall be included in the withdrawal value; in case such shares are pledged as collateral security for the repayment of a loan made thereon by such association, the amount of such loan shall be deducted from such withdrawal value and the difference only paid to such mem-

ber; amounts paid for salaries, commissions and other current expenses shall not be considered losses within the meaning of this section.

52. Payment of withdrawals.

Withdrawals from any such association shall be paid in the order in which the notices thereof shall have been received, but not more than one-half of the receipts of any one month shall be required to be used for the payment of withdrawal claims, without the consent of the board of directors, until the oldest of such claims then unpaid shall have been on file for a period of six months; but in no case shall payment be postponed for a period longer than six months from the date of such notice, and any member who has given the said notice may sue for and recover the withdrawal value of his shares in any such association in any court of competent jurisdiction, if the same is not paid in six months from the date of the giving of said notice of withdrawal.

Chapter 102 of New Jersey Pamphlet Laws of 1932, pp. 175, 176.

An Act to amend an act entitled "An Act concerning building and loan associations (Revision of 1925)," approved March twelfth, one thousand nine hundred and twenty-five.

Be it enacted by the Senate and General Assembly of the State of New Jersey:

1. Section fifty-two of the act of which this act is amendatory, be and the same is hereby amended so that the same shall read as follows:

52. Payment of withdrawals.

Withdrawals from any such association shall be paid in the order in which the notices thereof shall have been received but not more than one-half of the total receipts of

any such association in any month, as income on investments authorized by section twenty-six hereof, dues on shares pledged with such association to secure loans authorized by paragraphs II and V of section twenty-six hereof and repayment of loans authorized by paragraphs II and IV of section twenty-six hereof shall be required to be used for the payment of withdrawals, without the consent of the board of directors; provided however that if in any one month the funds of the association required to be available for the payment of withdrawals together with any other funds made available for such purpose by its board of directors, are at any time insufficient for the payment of all withdrawals which have been requested, then the right of any withdrawing member to priority of payment of the withdrawal value of his shares in the aforesaid order, shall be only to the extent of five hundred dollars in any one month and if all withdrawing members have received payments in full or on account of their withdrawals to the extent of five hundred dollars in any month and there is then a balance of such funds available for the payment of withdrawals then said order of priority of payment, to the extent of five hundred dollars shall continue to apply until such balance is exhausted; and no withdrawals shall be paid if the funds available for the payment of matured shares are insufficient to pay all matured shares, the payment of which has been requested within thirty days after maturity; and members who have thus requested payment of their matured shares shall have a right to such payment prior to the rights of members who have requested payment of withdrawal value of their shares. A member who has filed a notice or request for withdrawal shall not have the right to sue any such association to recover the withdrawal value of his shares or such part thereof as may not be paid, so long as the funds in the treasury of such association are applied as required herein.

2. This act shall take effect immediately.

Approved April 22, 1932.

Chapter 59 of the New Jersey Pamphlet Laws of 1935 (Section 52), pp. 153, 154, 155.

Section fifty-two of the act of which this act is amendatory be and the same is hereby amended to read as follows:

~~52.~~ Payment of maturities and withdrawals.

Maturities and withdrawals shall be paid in the manner and subject to the limitations provided herein:

(a) Maturities shall be paid in the order in which they become due except as provided herein and withdrawals shall be paid in the order in which notices of withdrawal shall have been filed except as provided herein; and

(b) The maturities of any one month shall be paid before the maturities of subsequent months; and

(c) One-third of the net receipts of any such association in each fiscal month shall be made available, so far as necessary for the payment of maturities or for the establishing of maturity reserves and another one-third of the net receipts of any such association in each fiscal month shall be made available so far as necessary for the payment of withdrawals; and the words "net receipts", as used in this section, shall be construed to mean the monies, other than borrowed monies, received by any such association less monies used for operating expenses, monies used to pay creditor obligations, monies used for conservation, preservation or protection of the property and assets of such association, and monies reserved for any of such purposes; and

(d) If at the end of any fiscal month the funds of any such association required to be made available for the payment of withdrawals, together with such other funds, if any, made available for such purpose by the board of directors, shall be insufficient for the payment of all withdrawals then

due and payable, the board of directors of such association shall, so far as possible pay out of such funds, on account of the sum due on each such withdrawal, in the order in which the notices shall have been filed, the sum of fifty dollars or the balance due thereon, whichever is less and, if the available funds shall not thereby be exhausted or become inadequate, shall, so far as possible, again pay on account of each such withdrawal, in said order, the sum of fifty dollars or the balance due thereon, whichever is less, and shall repeat the process until the available funds shall become inadequate or exhausted; and subsequent available funds, when available, shall be applied to the payment of then existing withdrawal obligations in the same manner beginning with the withdrawal next following the one on account of which the last such payment was made; and

(e) No member to whom any such association shall be obligated for the payment of any maturity or withdrawal shall have the right to bring suit against such association to recover the maturity or withdrawal value of his shares or any part thereof so long as the funds of such association shall be applied as required by this section; and

(f) The board of directors of any such association shall have the right, in their discretion, to make available additional funds other than those required in sub-division (c) of this section for the payment of maturities and withdrawals; provided however, that no more than one-third of the net receipts, as defined in sub-division (c) hereof shall be used for the payment of withdrawals while maturities remain unpaid; and provided further that borrowed monies shall not be used for the payment of withdrawals while maturities remain unpaid.

Chapter 118 New Jersey Pamphlet Laws of 1936 (Section 52), pp. 295, 296, 297.

Section fifty-two of the act of which this act is amendatory be and the same is hereby amended to read as follows:

52. Payment of maturities and withdrawals.

Maturities and withdrawals shall be paid in the manner and subject to the limitations provided herein:

(a) Maturities shall be paid in the order in which they become due except as provided herein and withdrawals shall be paid in the order in which notices of withdrawal shall have been filed except as provided herein; and

(b) The maturities of any one month shall be paid before the maturities of subsequent months; and

(c) One-third of the net receipts of any such association in each fiscal month shall be made available so far as necessary for the payment of maturities or for the establishing of maturity reserves and another one-third of the net receipts of any such association in each fiscal month shall be made available so far as necessary for the payment of withdrawals; and the words "net receipts," as used in this section, shall be construed to mean the monies, other than borrowed monies, received by any such association less monies used for operating expenses, monies used to pay creditor obligations, monies used for the conservation, preservation or protection of the property and assets of such association, and monies reserved for any of such purposes; and

(d) If at the end of any fiscal month the funds of any such association required to be made available for the payment of withdrawals, together with such other funds, if any, made available for such purpose by the board of directors, shall be insufficient for the payment of all withdrawals then due and payable, the board of directors of such association

shall, so far as possible, pay out of such funds, on account of the sum due to each member who has filed notice or notices of withdrawal, without regard to the fact that such notice or notices shall have been filed by such member on more than one share account, in the order in which such notices shall have been filed, the sum of fifty dollars or the balance due to such member, whichever is less and, if the available funds shall not thereby be exhausted or become inadequate, shall, so far as possible, again pay on account of the sum due to each such withdrawing member, in said order, the sum of fifty dollars or the balance due to such member, whichever is less, and shall repeat the process until the available funds shall become inadequate or exhausted; and subsequent available funds, when available, shall be applied to the payment of then existing withdrawing obligations in the same manner beginning with the withdrawal of the member next following the one on whose account the last such payment was made; and in the event that such member shall have filed more than one notice of withdrawal, his place in the order of payment shall be as of the date and time of the first notice filed by him; and

(e). No member to whom any such association shall be obligated for the payment of any maturity or withdrawal shall have the right to bring suit against such association to recover the maturity or withdrawal value of his shares or any part thereof so long as the funds of such association shall be applied as required by this section; and

(f) The board of directors of any such association shall have the right, in their discretion to make available additional funds other than those required in sub-division (c) of this section for the payment of maturities and withdrawals; provided however, that no more than one-third of the net receipts as defined in sub-division (c) hereof shall be used for the payment of withdrawals while maturities remain unpaid; and provided, further that borrowed monies shall not be used for the payment of withdrawals while maturities remain unpaid.

Chapter 188 of the New Jersey Pamphlet Laws of 1937 Published as P. L. 1938, p. 832.

An Act to establish all the public statute law of a general nature of the State of New Jersey in the form of a revision, consolidation and compilation, to be known as the Revised Statutes.

Be it Enacted by the Senate and General Assembly of the State of New Jersey:

1. The revision, consolidation and compilation prepared under the direction of the Legislature by the Revision Commission appointed under chapter seventy-three of the laws of one thousand nine hundred and twenty-five presented to the Legislature by the Commission upon the twentieth day of December, one thousand nine hundred and thirty-seven, be and the same is hereby adopted as all the public statute law of the State of New Jersey of a general nature.

2. This statute and the revision, consolidation and compilation so adopted as aforesaid and incorporated herein shall in all respects, and whether revision, consolidation or compilation, be known as the Revised Statutes.

3. The Revised Statutes as hereinbefore defined and as hereinafter enacted, shall take effect immediately.

And be it further enacted, That

Approved December 20, 1937.

Revised Statutes of New Jersey of 1937— Title 17: Chapter 12, Par. 53.

Payment of maturities and withdrawals.

Maturities and withdrawals shall be paid in the manner and subject to the limitations provided herein.

a. Maturities shall be paid in the order in which they become due except as provided herein and withdrawals shall be paid in the order in which notices of withdrawal shall have been filed except as provided herein; and

b. The maturities of any one month shall be paid before the maturities of subsequent months; and

c. One-third of the net receipts of any such association in each fiscal month shall be made available, so far as necessary for the payment of maturities or for the establishing of maturity reserves and another one-third of the net receipts of any such association in each fiscal month shall be made available so far as necessary for the payment of withdrawals; and the words "net receipts" as used in this section shall be construed to mean the moneys, other than borrowed moneys, received by any such association less moneys used for operating expenses, moneys used to pay creditor obligations, moneys used for the conservation, preservation or protection of the property and assets of such association, and moneys reserved for any of such purposes; and

d. If at the end of any fiscal month the funds of any such association required to be made available for the payment of withdrawals, together with such other funds if any, made available for such purpose by the board of directors, shall be insufficient for the payment of all withdrawals then due and payable; the board of directors of such association shall so far as possible, pay out of such funds, on account of the sum due to each member who has filed notice or notices of with-

drawal, without regard to the fact that such notice or notices shall have been filed by such member on more than one share account, in the order in which such notice shall have been filed, the sum of fifty dollars or the balance due to such member, whichever is less and, if the available funds shall not thereby be exhausted or become inadequate, shall, so far as possible, again pay on account of the sum due to each such withdrawing member, in said order, the sum of fifty dollars or the balance due to such member, whichever is less, and shall repeat the process until the available funds shall become inadequate or exhausted; and subsequent available funds, when available, shall be applied to the payment of then existing withdrawal obligations in the same manner beginning with the withdrawal of the member next following the one on whose account the last such payment was made; and in the event that such member shall have filed more than one notice of withdrawal, his place in the order of payment shall be as of the date and time of the first notice filed by him; and

e. No member to whom any such association shall be obligated for the payment of any maturity or withdrawal shall have the right to bring suit against such association to recover the maturity or withdrawal value of his shares or any part thereof so long as the funds of such association shall be applied as required by this section; and

f. The Board of directors of any such association shall have the right in its discretion, to make available additional funds other than those required in paragraph "c" of this section for the payment of maturities and withdrawals; but no more than one-third of the net receipts as defined in said paragraph "c" shall be used for the payment of withdrawals while maturities remain unpaid. Borrowed moneys shall not be used for the payment of withdrawals while maturities remain unpaid.

Source L. 1925, c. 65, Sec. 52, p. 212, as am. by L. 1932, c. 102 sec. 1, p. 175, L. 1935, c. 59, sec. 11, p. 153, L. 1936, c. 118, Sec. 4, p. 295.

Revised Statutes of New Jersey of 1937— Title 1: Chapter 1, Par. 4.

1:1-4. Construction as continuation of heretofore existing laws. The provisions of the Revised Statutes, not inconsistent with those of prior laws, shall be construed as a continuation of such laws.

Revised Statutes of New Jersey of 1937— Title 1: Chapter 1, Par. 5.

1:1-5. Classification and arrangement; effect on construction. The classification and arrangement of the several sections of the Revised Statutes have been made for the purpose of convenience; reference and orderly arrangement, and therefore no implication or presumption of a legislative construction is to be drawn therefrom.

Revised Statutes of New Jersey of 1937— Title 1: Chapter 1, Par. 5.1.

1:1-5.1. Citation of, pleading or otherwise referring to legislation contained in Revised Statutes. The Legislation contained within any title, sub-title, part, chapter, article, section or group of sections of these Revised Statutes may be cited, pleaded or otherwise referred to by reference to such title, sub-title, part, chapter, article, section or group of sections of the "Revised Statutes" containing such legislation; and the use of the words "Revised Statutes" shall have the same effect as if the legislative title under which these Revised Statutes were adopted and the approval date thereof had been used.

In any citation the abbreviation "R. S." shall be equivalent to "Revised Statutes", and sections of these Revised Statutes may be cited by section number only preceded by such abbreviation.